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C O N F I D E N T I A L SECTION 01 OF 03 MANILA 003805

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STATE PASS TO USTR FOR BWEISEL AND DKATZ
USDOC FOR 4403/ITA/MAC/SBERLINGUETTE
USDOC PASS TO USPTO FOR PETER FOWLER
BANGKOK FOR DOJ CHRIS SONDERBY

E.O. 12958: DECL: 08/31/2016
TAGS: [ECON](#) [ETRD](#) [EINV](#) [KIPR](#) [RP](#)
SUBJECT: BELEAGUERED OPTICAL MEDIA BOARD CONTINUES TO FIGHT
IP PIRACY

Classified By: ECONOMIC COUNSELOR LARRY MEMMOTT FOR REASONS 1.4 B AND D

¶1. (C) Summary: The Philippine Optical Media Board (OMB) faces insufficient funding, bureaucratic infighting, and unjustified criticism as it attempts to deal with the difficult piracy problem of the Philippines. Under-funding hampers the agency's ability to effectively enforce the Optical Media Law. Intellectual Property Office Director General Adrian Cristobal may be trying to take control of the OMB while a local Filipino non-governmental organization dedicated to improving IPR protection is heavily criticizing the OMB, seemingly without justification. Despite these problems, the OMB continues to lead useful raids and find creative ways to extend its reach. US intellectual property rights holders believe the OMB and its Chairman, Edu Manzano are doing an outstanding job. End Summary.

¶2. (SBU) Econoff met with numerous individuals including Edu Manzano, Chairman of the Optical Media Board; Adrian Cristobal, Director General of the Intellectual Property Office; and other GRP officials and businesspeople concerned with IPR in July and August to discuss recent developments at the Optical Media Board.

STILL NO MONEY

¶3. (SBU) The OMB continues to conduct numerous raids against IPR violators despite its persistent lack of funds. OMB's current funding covers personnel and administrative costs, but allocates only \$19,500 for operations. With a major raid costing between \$5000 and \$6000, the money does not go far. Resty Meneses who was appointed as the new OMB Executive Assistant in May said OMB does not even have money to buy water or snacks for investigators during a raid operation (crucial for getting anything done in the Philippines). As a result, the OMB can undertake major raids only if all operational costs are paid by intellectual property rights (IPR) holders such as the Motion Picture Association of America (MPAA). The additional funds of over \$200,000 from the Manila Film Festival promised by President Arroyo for operational expenses has not materialized. Instead, OMB received a nominal sum which the OMB Oversight Committee specified could not be used for operations. OMB Chairman Edu Manzano said he is personally financing some of the agency's operations, and he may not get reimbursed.

¶4. (SBU) The lack of funding also affects the agency's staffing. Manzano said of the 19 enforcement operations

positions, only 13 are currently filled. He also has four legal positions, all vacant. People are going to the private sector because they can make a lot more money, Manzano said. Executive Director Meneses has not received a paycheck from the OMB since he started work in May. Manzano is paying him his salary out of his own pocket, Meneses said.

POLITICS AND CRITICISMS

¶5. (C) In addition to lack of resources, Manzano said he is convinced, based on information from several sources, that Adrian Cristobal, Director General of the Intellectual Property Office (IPO), is maneuvering to take over the OMB. Manzano says he continues to maintain a close friendship with Cristobal, but says Cristobal may be motivated by personal political considerations, suggesting that by having a more active role in enforcement, Cristobal may be able to increase his public visibility before a likely bid for the Senate in ¶2007. Cristobal has a closer link to President Arroyo than Manzano and he may be using that link to influence policy direction with respect to the OMB, Manzano said.

¶6. (SBU) The OMB was initially established as an autonomous agency reporting directly to the Office of the President, but in recent months, Cristobal has gained increasing influence over the OMB. Cristobal asked the President to officially designate the IPO as the oversight authority over all IPR agencies including the OMB, which President Arroyo announced in January 2006. While all IP agencies remain autonomous, the President's directive empowered Cristobal as the principal coordinator of GRP policy on IPR. In May 2006, the President placed OMB under the Department of Trade and Industry (DTI) and directed OMB to report to Secretary

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Favila. Moving OMB to DTI essentially elevated Cristobal's ability to directly influence policy with respect to OMB given its placement within his own agency and his role as senior official for IP policy. Cristobal also sits on the Optical Media Board Oversight Committee.

¶7. (C) Eduardo Sazon, Vice Chairman of the Intellectual Property Coalition which represents mainly Filipino innovators and lawyers, recently submitted a confidential report to Cristobal arguing that the OMB is not fulfilling its mandate and is largely ineffective. Manzano is unaware of this report. The Intellectual Property Coalition works closely with the Intellectual Property Office and several of its members are close contacts of Director General Cristobal. Sazon told econoff that the OMB is only implementing the enforcement requirements of the Optical Media Act and none of the administrative responsibilities, which include licensing, collection of fees, and enforcement of fines for administrative violations. OMB's staff is disorganized, there are no lawyers, and the implementing rules and regulations (IRRs) are not readily available and understood at all levels, Sazon added. (Comment: The Embassy has worked closely with the OMB since its establishment three years ago. USAID has provided significant technical assistance. While the OMB shares some of the weaknesses common to GRP institutions, we find these criticisms to be largely inaccurate.)

¶8. (C) Cristobal told econoffs the OMB is maintaining successful raid activity, but needs to address organizational and strategic issues. However, he said he cannot make an overall judgment because he "is busy running his own organization." Manzano told econoff that Cristobal submitted to the President a confidential report, which Manzano still has not seen, with policy recommendations likely affecting OMB. "This is highly unusual," Manzano said, "in the past, we consulted on such policy recommendations and cleared them with each other before sending them to the President."

US MOTION PICTURE INDUSTRY PLEASED WITH OMB

¶19. (SBU) Despite a lack of resources and his worries about the political maneuverings and criticisms, Manzano continues to persevere. He has taken a much more active leadership role in the organization this year and seems personally committed to the agency's success. Representatives from the Motion Picture Association of America (MPAA) had only positive things to say about Manzano and the OMB, noting that he is doing an "outstanding job." MPAA says the OMB has conducted a record number of raids, has excellent investigators, and is working closely with MPAA to address optical media piracy. They and others in the private sector are also impressed with new Executive Director Meneses who they say is energetic, enthusiastic, and experienced.

OMB TRIES NEW THINGS

¶10. (SBU) Trying to use his funds creatively, Manzano is developing new initiatives to maximize the OMB's impact. One such program is what he calls "noise raids" in which he sends out his staff in yellow t-shirts that clearly identify them as agents of the OMB. While they don't actually conduct a raid, Manzano said, his staff is so recognizable that as soon as they show up, the pirates shut down their operations fearing seizures and arrests. Manzano said he does a couple of these noise raids a week in addition to a regular enforcement operation simply to "cause trouble and raise visibility."

¶11. (SBU) Another initiative is negotiating a memorandum of agreement with Ayala Malls which owns some of the premier malls in the Philippines. Under this agreement, Ayala would formally agree to prohibit vendors of illegitimate optical media products to operate in their malls. Ayala would self-police its vendors and OMB would commit to fewer raid actions against those malls. If the initiative is successful, Manzano would like to pursue it with other malls as well. Another program he is trying is a 60 day "crack down on piracy" campaign he is coordinating with local government units outside the national capital region in order to raise awareness of optical media piracy issues in other

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parts of the country.

COMMENT

¶12. (C) The OMB is a highly visible government agency that earned much praise from President Arroyo and from the US Government over the past year, making the position of OMB Chairman politically desirable. While there is more the OMB can be doing, the agency is severely handicapped by a nearly non-existent budget. Criticisms from the Intellectual Property Coalition appear to be inaccurate. Manzano is respected by US rights holders who say he is doing the best job he can, given the circumstances. A bid from Cristobal to take over the OMB for personal political reasons is possible, but unlikely. More likely, Cristobal is only looking to increase his influence over the broader IPR apparatus of the GRP.
Jones